IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

OP.No. 24236 of 2002(I)

PETITIONER:

M/S.CATHOLIC SYRIAN BANK LTD,
PALAKKAD BRANCH, PALAKKAD, REPRESENTED
BY ITS BRANCH MANAGER, JOY THOTTAN,
AGED 46, S/O.JOSEPH.

BY ADV. SRI.M.PATHROSE MATHAI

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
ITS CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, PALAKKAD.

3. THE REVENUE DIVISIONAL OFFICER, PALAKKAD

4. THE DEPUTY TAHSILDAR, REVENUE
RECOVERY, ALATHUR

5. INSPECTING ASSISTANT COMMISSIONER
(SPECIAL) TAX DEPARTMENT, PALAKKAD.

6. SMT.ELSY PAUL C.CHAKOLA,
W/O.LATE C.K.PAUL CHAKOLA,
EASTERN CHAT PLANTATIONS.
KANNGAYAM P.O., MANGALAM DAM, PALAKKAD.

7. SHRI.JOHN CHAKOLA, S/O.LATE
C.K.PAUL CHAKOLA, EASTERN CHAT PLANTATIONS,
KANNGAYAM P.O., MANGALAM DAM, PALAKKAD.

8. SHRI.ANTONY CHAKOLA, S/O. LATE
C.K.PAUL CHAKOLA, EASTERN CHAT PLANTATIONS,
KANNGAYAM P.O., MANGALAM DAM, PALAKKAD.

9. SHRI.EMMANUAL CHAKOLA, S/O.LATE
C.K.PAUL CHAKOLA, EASTERN CHAT PLANTATIONS,
KANNGAYAM P.O., MANGALAM DAM, PALAKKAD.

10. SHRI.PETER CHAKOLA,
S/O.LATE C.K.PAUL CHAKOLA,
EASTERN CHAT PLANTATIONS, KANNGAYAM P.O.,
MANGALAM DAM, PALAKKAD.

11. SHRI.JOSEPH CHAKOLA,
S/O.LATE C.K.PAUL CHAKOLA,
EASTERN CHAT PLANTATIONS,
KANNGAYAM P.O., MANGALAM DAM,
PALAKKAD

ADDL. RESPONDENT:

12. PANKAJAKSHAN.C.I., AGED 38 YEARS,
S/O.ITTAMAL, "CHITHAYATH",
MANGALAM DAM, PALAKKAD DIST.

(ADDL. R12 IS IMPLEADED AS PER ORDER DT.3.3.2003 IN
C.M.P. NO.10977/2003)

R1 TO5 BY G.P. SMT.SMITHA
R12 BY ADV. SRI.P.K.RAVI KRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.41036/2002 IN O.P.NO.24236/2002

DISMISSED:

14.2.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE PHOTOSTAT COPY OF PLAINT IN O.S. NO.657/96 BEFORE SUB COURT, PALAKKAD DT.31.10.1996 FILED BY PETITIONER.

P2: TRUE PHOTOCOPY OF ORDER IN T.A. NO.1082/97 DT.20.7.2000.

P3: TRUE PHOTOCOPY OF LETTER ISSUED BY R11 TO THE PETITIONER DT.27.2.2001.

P4: TRUE PHOTOCPY OF REVISION PETITION AND STAY PETITION FILED BY PETITIONER BEFORE R2 DT.5.3.2001.

P5: TRUE PHOTOCOPY OF ORDER DT.27.3.2001 ISSUED BY R2.

P6: TRUE PHOTOCOPY OF DEMAND NOTICE IN D.R.C. NO.213 IN T.A. NO.1082/97 DT.24.8.2001.

P7: TRUE PHOTOCOPY OF PROCLAMATION OF SALE NOTICE DT.8.4.2002 IN D.R.C. NO.213.

P8: TRUE PHTOCOPY OF NOTIFICATION IN MALAYALA MANORAMA DAILY DT.16.2.2002.

P9: TRUE PHOTOCOPY OF REVISION PETITION BEFORE R2 DT.16.8.2002.

P10: TRUE PHOTOCOPY OF STAY PETITION BEFORE R2 DT.16.8.2002.

P11: TRUE COPY OF PETITION FILED BY PETITIONER BEFORE R2 DT.5.11.2002.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.24236 of 2002

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Dated this the 14th day of February, 2007.

JUDGMENT

The petitioner is challenging sale of an item of property of respondents 6 to 11 to additional 12th respondent in recovery proceedings for recovery of arrears of agricultural income tax, plantation tax and basic land tax on the ground that petitioner has first charge by virtue of mortgage executed by defaulters/owners of the land in favour of the petitioner-Bank. The Agricultural Income Tax Act and the Plantation Tax Act create charge on the property for the assessed tax. This court has held in similar case in SHERRY JACOB V. CANARA BANK (2004(3) KLT 1089) that State has first charge even over mortgage debt and therefore, recovery can be effected by the sale of defaulter's property in recovery proceedings overlooking the mortgage in favour of the Bank. Sri.Pathrose Mathai, Senior counsel appearing for the petitioner contended that mortgage is of the year 1980 and tax liability accrued subsequently. I do not think there is any justification to consider validity of the sale based on this distinction on facts pointed out by the petitioner for more than one reason. In the first place, sale was effected to the additional 12th respondent more than six years back and the

said sale was confirmed and he has developed the agricultural land by making massive investment. The petitioner has no case that the sale is at below the market price. Therefore, there is no justification to interfere with the sale confirmed in favour of additional 12th respondent. The remaining issue is only who has prior claim over the recovered amount. Since the details of tax liability are not available on record, I leave freedom to the petitioner to make a claim before the District Collector, if petitioner has a case that it has prior charge inspite of the law declared by this court in the context of sales tax liability. If any such claim is made, the Collector will consider the nature of tax due for which recovery is effected, the statutory provision under which priority is claimed and consider State's priority in the light of the judgment abovereferred and if petitioner's claim is tenable, he will release the recovered amount to the petitioner. It is also to be noted that the amount due to the petitioner from the defaulter is running into crores and the amount recovered through sale of an item of property is insignificant compared to the liability due to the Bank. Therefore, I do not know whether it is worthwhile for the Bank to pursue this matter against the Government instead of proceeding against defaulter's other properties

and recovering the amount from their other properties.

The O.P. is disposed of with the above observations and directions.

C.N.RAMACHANDRAN NAIR
Judge

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